

(1992) 09 OHC CK 0022

Orissa High Court

Case No: Original Jurisdiction Case No's. 4056/91

Dr. Santanu Kumar Das and
Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision: Sept. 22, 1992

Acts Referred:

- Constitution of India, 1950 - Article 14
- Orissa Motor Vehicles Taxation Act, 1975 - Section 13, 4A

Citation: AIR 1993 Ori 73 : (1993) 75 CLT 119

Hon'ble Judges: K.C. Jagdeb Roy, J; G.B. Patnaik, J

Bench: Division Bench

Advocate: J. Das, V. Narasingh, S.B. Das, S.K. Das and G.B. Dash, for the Appellant;
Standing Counsel (Transport), for the Respondent

Final Decision: Partly Allowed

Judgement

G.B. Patnaik, J.

In this batch of writ applications the constitutional validity of the amended provisions of the Orissa Motor Vehicles

Taxation Act as well as the Rules framed thereunder has been challenged.

2. Under the pre-amended law the owners of the vehicles were required to pay tax and obtain tax token every year which resulted in wastage of

time as well as incurring extra expenditure by making journey to the Regional Transport Offices. Simultaneously with the increasing number of

vehicles the work load in the offices of the Regional Transport Officers keeps increasing requiring more and more of supporting staff to attend to

the work. In a meeting of the Transport Ministers held at New Delhi in April, 1986, it was suggested that payment of one time tax should be introduced in respect of personalised vehicles. In accordance with this decision and to achieve object of lessening harassment of the vehicle owners as well as to reduce the work load in the taxing offices, Government of India advised the State Government to effect necessary amendment to the respective taxation Act and the Rules and accordingly the amendment to the Orissa Motor Vehicles Taxation Act and the Rules have been made. Under the amended provisions, in respect of every vehicle of the descriptions specified in items 1 and 2 of the Schedule, which is used personally or kept for personal use, one time tax at the rate equal to ten times the annual rate of tax as specified in the Schedule has to be paid. u/s 13, if the tax due in respect of any Motor Vehicle has not been paid as specified in Sections 4 and 4A then penalty has to be levied in such manner as may be prescribed, u/s 13(2) no penalty shall be imposed without giving the party concerned a reasonable opportunity of being heard. The petitioners" contend that this provision contained in Section 4A of the Orissa Motor Vehicles Taxation Act brought by way of amendment casts an unreasonable burden on the user of the vehicle and it makes a discrimination between the user of personalised vehicles and the user of commercial vehicles and, therefore, the provisions must be struck down as being violative of Article 14.

3. We do not find any substance in the aforesaid contention. The amended provision, does not, in our opinion, cast an unreasonable burden on the user of the vehicles and, on the other hand, it relieves the user from annual botheration of going to the Taxing Officer and making necessary payment and obtaining the tax taken in support of the same. Though the life of a vehicle is ordinarily much more than ten years but the legislature while introducing tax at one point felt that ten times of the annual tax would be a justifiable amount. By virtue of the amended provisions what the users would have done every year required to do only once. Neither it casts an unreasonable burden as contended by the learned counsel for the petitioners nor can it be said to be discriminatory because the benefit has been conferred only to a particular category of vehicles and its users,

namely, personalised vehicles. The said benefit for avowed reasons has not been conferred to the commercialised vehicles or any other vehicles used for commercial purposes. The personalised vehicles form a class by themselves as distinguished from the other category of vehicles by grouping the personalised vehicles entitled to receive the advantage and benefits of the amended provisions. Such advantages have been denied to other category of vehicles. Therefore, users of the personalised vehicles cannot claim a provision made by the legislature to their advantage to be violative of Article 14. In this view of the matter, we do not find any substance in the submission of the learned counsel for the petitioners that the provisions are unconstitutional. That apart in the amended provisions itself sufficient care has been taken for refund of the tax if after payment of one time tax, the vehicle is removed to any other State for transfer of ownership or change of address or its registration is cancelled as contained in Sub-section (4) of Section 4-A. In the aforesaid premises, we are not in a position to hold that Section 4-A is in any manner repugnant to any of the constitutional provisions. The submission of Mr. Das, the learned counsel for the petitioners who led the argument as well as the submission of the other learned counsel for different writ petitioners in this regard cannot be sustained.

4. While we have no hesitation to uphold the constitutional validity of Section 4-A of the Orissa Motor Vehicles Taxation Act, but we find ample force in the submission of the learned counsel for the petitioners with regard to the provision for penalty. So far as the penalty is concerned, Section 13 is the relevant provision. u/s 13, if the tax due in respect of any Motor Vehicle has not been paid as specified in Section 4, then the registered owner or the person having possession or control thereof shall in addition to payment of tax due, be liable to pay a penalty which may extend to twice the quarterly tax in respect of that vehicle to be levied by such officer by order in writing and in such manner as may be prescribed. By virtue of the amended provision, if the tax due in respect of any Motor Vehicle has not been paid-as specified in Sections 4 and 4-A then the registered owner or the person having possession or control thereof shall in addition to payment of tax due be liable to pay a penalty which may

extend to twice the tax due in respect of that vehicle to be levied by such officer by order in writing and in such manner as may be prescribed. We

are concerned in the present case with the amount of tax due as provided in Section 4-A since by virtue of the said amended provision one time

tax is now contemplated to be paid. The submission of Mr. Das appearing for the petitioners in this regard is that the expression ""tax due"" should

be construed to mean as the tax due annually and, therefore, while levying penalty u/s 13 for non-payment of even one time tax the quantum of

penalty would be twice the annual tax due. According to Mr. Das, the expression ""tax due"" cannot be of greater amplitude than what is the

charging section mandates and there cannot be a pre-deter-mined penalty on the basis of the period of delay bereft of the facts and circumstances

of a particular case. In other words, while the legislatures have introduced the system of payment of one time tax and in computing the same they

have made it to be ten years, annually to be paid at a time but while levying penalty twice the said one time tax cannot be levied and such levy of

penalty would be unreasonable and must be struck down. According to Mr. Das Section 13 authorising levy of penalty twice the one time payment

of tax must be struck down. The learned Standing Counsel, on the other hand, submits that if certain benefit has been conferred upon the users of a

particular category of vehicle permitting them to pay the entire tax at one point of time, then that entire amount should be taken as an unit and,

therefore, if it is not paid in time, the penalty must be twice as that of the amount and there is no invalidity in the same. Having considered the rival

submissions, we are persuaded to accept the submission of Mr. Das appearing for the petitioners. By the amended provisions of Section 4-A of

the Orissa Motor Vehicles Taxation Act what the legislatures have done is to permit the user of a particular category of vehicles when kept for

personal use to pay one time tax but the quantification has been made at the rate equal to ten times the annual rate of tax in respect thereof as

specified in the Schedule. Thus the unit of taxation at the annual rate has not been totally obliterated. On the other hand they have quantified on the

basis often times the annual rate of tax as specified in the Schedule to be paid at one point of time. This being the position, while levying penalty the

said concept must also be borne in mind. As otherwise twice the amount of penalty that means twenty times the annual rate of tax in the event the penalty clause attracted would be grossly unreasonable and arbitrary. Not doubt the provision as contained is susceptible of construction as advanced by the learned Standing Counsel for the Department but if that contention is accepted, then there would be no other alternative than to strike down the provisions to be unreasonable and casting an excessive and unreasonable burden on the user of a vehicle who fails to deposit one time tax for a particular period. But instead of striking down the statute we think it appropriate to read it down so as to make the statute purposeful and sub serve the intention of the legislature and at the same time, it would not be an undue harassment to the users of the vehicles for whose benefit the legislation has been amended. Their Lordships of the Supreme Court in the case of K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, while considering the validity of Section 52(2) of the Income Tax Act decided to read down the law in view of the declaration made by the Finance Minister on the floor of the Parliament rather than striking down the same. Such a reading down is permissible at times even at the cost of doing violence to the language of a statute when an alternative open to the Court is either to strike down the provision or to maintain the provision by reading it down. In the facts and circumstances of the present case, we would prefer the latter. In that view of the matter, so far as the penalty u/s 13 is concerned, the taxing authority can levy penalty in case the provisions of Section 13 are attracted even in respect of vehicles covered by Section 4-A of the Orissa Motor Vehicles Taxation Act to the extent of twice the annual rate of tax in respect of the same as specified in the Schedule, and, therefore, the taxing authority is not entitled to levy penalty of twice the one time tax as payable Under/Section 4-A. Section 13 must be read to the aforesaid extent.

5. The writ applications are accordingly allowed so far as the levy of penalty is concerned. There would be no order as to costs.

K.C. Jagdeb Roy, J.

6. I agree.